

entirely competent to submit the question of issuing a certain amount of bonds for a partial structure only, provided that the facts were clearly set forth in the bond legislation and in the notice of the election and ballots used. It would also be proper, in the event that there existed a sum in the building fund of the district available for the improvement, to issue bonds merely to augment the amount already available, provided this fact is made clear. I assume, however, that there was no indication in this case that the expenditure of the \$45,000 would not complete the improvement. For this reason, I am of the opinion that the board of education, in the case you cite, is without authority to issue bonds without submitting the question to a vote of the electors in order to complete an improvement for which they have already been authorized to expend the sum of \$45,000 only. In order to legalize the proposed expenditure it will be necessary to secure authority from the people by submitting the question of the issuance of the \$13,000 additional bonds in such a way that the voters will be advised that this expenditure is to supplement the \$45,000 expenditure originally authorized.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

605.

HOUSE BILL NO. 80—IS SUBJECT TO THE REFERENDUM—REFERENDUM DISCUSSED.

SYLLABUS:

*Under the provisions of Section 1c of Article II of the Ohio Constitution, House Bill No. 80 not being an act which is self-executing in providing for a tax levy is subject to the referendum and does not become effective until ninety days after it was filed in the office of the Secretary of State on May 12, 1927, which will be on and after August 10, 1927.*

COLUMBUS, OHIO, June 13, 1927.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“You are respectfully requested to advise this department when House Bill No. 80, enacted at the present session of the General Assembly became or will become effective. The question arises in our mind whether this is an act which under the constitution should become effective upon the filing of the same in the office of the Secretary of State or whether it is not effective until after the expiration of the period of ninety days.”

Article II, Section 1d of the Ohio Constitution provides as follows:

“Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. \* \* \* ”

In the case of *State, ex rel, Keller vs. Forney et al., Tax Commission of Ohio*, 108 O. S. 463, the court had under consideration the above constitutional provisions. The third paragraph of the syllabus is as follows:

"The express language, 'laws providing for tax levies,' is limited to an actual self-executing levy of taxes, and is not synonymous with laws 'relating' to tax levies, or 'pertaining' to tax levies, or 'concerning' tax levies, or any agency or method provided for a tax levy by any local subdivision or authority."

By Section 1c of Article II, the people's right of referendum was declared and guaranteed by the constitutional amendment of 1912. The particular part of that article in point is:

"No law passed by the General Assembly shall go into effect until ninety days after it shall have been filed by the Governor in the office of the Secretary of State, except as herein provided. When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed \* \* \* the Secretary of State shall submit to the electors of the state for their approval or rejection such law \* \* \* at the next succeeding regular or general election. \* \* \*"

The language "except as herein provided" evidently relates to the language of Section 1d of Article II, supra.

By the adoption of the constitutional provisions referred to a general policy of power was reserved to the people to approve or disapprove, to adopt or reject, by referendum, any law or section of law passed by the General Assembly of Ohio with these three particular exceptions:

- (1) "Laws providing for tax levies."
- (2) Laws providing for "appropriations for the current expenses of the state government and state institutions."
- (3) "Emergency laws necessary for the immediate preservation of the public peace, health or safety."

It is apparent that there is a distinction between "laws providing for the levy of taxes" and laws "pertaining to" or "relating to the levy of taxes."

The court clearly announced the rule of law in Ohio in the above entitled case construing what is known as the Taft Act, to be that:

"Though the law may 'relate' or 'pertain' or 'limit' tax levies, it must, to come within the constitutional exception, 'provide for a tax levy', and therefore be self-executing."

A careful examination of House Bill No. 80 reveals that this law provides only the machinery for levying taxes within certain limitations therein specified but does not in and of itself provide for a tax levy. In other words it is not self-executing. It simply provides a new agency to be used by the proper taxing authority.

It is entitled "An Act—Providing for levying of taxes by local subdivisions and their method of budget procedure, and repealing Sections 2034 \* \* \* of the General Code."

Specifically answering your question, it is my opinion that said act does not become effective until ninety days after it was filed by the Governor in the office of the Secretary of State, to-wit, on and after August 10, 1927.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

606.

FOREIGN CORPORATIONS—LATEST DATE WHEN IT MAY ELECT TO  
EXEMPT ITS SHARES OF STOCK HELD BY OHIO SHARE HOLDERS.

SYLLABUS:

*The latest date on which a foreign corporation could have made the necessary election under Section 192 of the General Code, so as to exempt its shares of stock held by Ohio shareholders from the general property tax in 1927, was the day preceding the first day of January as to the shares of stock held by corporations and the day preceding the second Monday in April as to its shares of stock held otherwise than by domestic corporations.*

COLUMBUS, OHIO, June 13, 1927.

*The Tax Commission of Ohio, Columbus, Ohio.*

Attention, John R. Cassidy, Chairman.

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“In view of the recommendation of your department (with which we fully agree) for the cancellation of the franchise tax which was attempted to be assessed by this commission on the stock of The National Malleable and Steel Castings Company of Delaware, it becomes important for us to have you advise us as to:

What is the latest date on which a foreign corporation can be admitted under the Ohio statute to do business in this state and make the necessary election under Section 192 of the General Code, so that its shares of stock may be exempted from the general property tax in 1927 when owned by residents of Ohio?”

The National Malleable and Steel Castings Company of Delaware, did not qualify to do business in Ohio until December, 1926, and therefore, your commission was advised that it would be an impossibility under our taxing laws to secure the exemption of the Ohio owned stock for the year 1926, all tax listing days under our law having passed before the company qualified to do business in Ohio.

Section 192, General Code, provides:

“No person shall be required to list for taxation a share of the capital stock of an Ohio corporation; or a share of the capital stock of a foreign corporation, the property of which is taxed in Ohio in the name of such corporation; or a share of the capital stock of any other foreign corporation provided such corporation, for the privilege of exercising its franchise